IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8852 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8852 of 2004

MR MEHUL S SHAH for Petitioner No. 1

Mr. Sood, AGP for Respondent No. 1-2

MR PRAVIN GONDALIYA for Respondent No. 3

NOTICE SERVED BY DS for Respondent No. 4-7

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 18/08/2004

ORAL JUDGEMENT

Rule. Shri Sood, learned AGP wsaives service of Rule on behalf of respondents No. 1 and 2. Though served nobody appears on behalf of respondents No. 4 to 7. With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order dated 30th December 2003 passed by the Secretary (Appeals), State of Gujarat, Ahmedabad in Revision Application No. 2/1996 in dismissing the same and confirming the order passed by the Collector, Rajkot, dated 12th June 1996.

3. Shri Mehul Shah, learned advocate appearing on behalf of the petitioner has submitted that the judgment and order passed by the revisional authority is a non-speaking and non-reasoned order and no reasons have been assigned while dismissing the revision application, and though number of submisions were made the revisional authority has not considered/dealt with the same, and/or if considered then the same is not reflected in the order whether they are dealt with and/or considered or not. On this ground alone the learned advocate for the petitioner has requested to set aside the order passed by the revisional authority and to remand the matter to the revisional authority for deciding the revision application afresh and to decide and dispose of the same after assigning reasons. Shri Pravin Gondaliya, learned advocate appearing on behalf of respondent No.3 has submitted that in fact the revisional authority has considered the material available before him but there are no specific findings and/or reasons given.

4. From the bare reading of the judgment and order dated 30th December 2003/17th January 2004 passed by the revisional authority, it is crystal clear that the revisional authority has not assigned any reason whatsoever while rejecting the revision application and confirming the order passed by the Collector, Rajkot. Recording of the reasons in support of the order is a part of natural justice and every quasi-judicial authority, including Administrative Tribunal, is bound to record reasons in support of orders passed by it. The Hon'ble Supreme Court of India, in the case of M.P. Industries Vs. Union of India, reported in AIR 1966 SC 671, has observed as under;

> "In the context of a welfare State, administrative tribunals have come to stay. Indeed, they are the necessary concomitants of a welfare State. But arbitrariness in their functioning destroys the concept of a welfare State itself. Self-discipline and supervision

> exclude or at any rate minimise arbitrariness. The least a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimises arbitrariness; it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory Court to keep the tribunals within bounds. A reasoned order is a desirable condition of judicial disposal."

4.1. Putting emphasis on recording of reasons by administrative tribunals in support of the orders passed by them, the Hon'ble Supreme Court observed in the case of S.N. Mukherjee v. Union of India, reported in (1990) 4 SCC 594, as under;

> "Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of a sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the tribunal itself. Therefore, statement of reasons is one of the essentials of justice."

5. A party has a right to know not only the result of enquiry but also reasons in support of decision. A party affected must know why and on what grounds an order has been passed against him. If the order passed by the adjudicating authority is subject to appeal or revision, the party or revisional Court will not be in a position to understand what weighed with the authority and whether the grounds on which the order was passed were relevant, existent and correct, and exercise of right of appeal would be futility. The Courts insist upon for reasons in support of the order on three grounds;

(1) the party aggrieved in a proceeding before the High Court or the Supreme Court has the opportunity to demonstrate that the reasons which

persuaded the authority to reject his case were erroneous;

(2) the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power; and

(3) it gives satisfaction to the authority against whom the order is made.

While emphasizing the need to pass a reasoned order, the Hon'ble Supreme Court of India, in the case of Notified Area Committee Vs. Additional Director, Consolidation and Others - (2002) 10 SCC 87 has observed as under;

> ".....The reasons are the flesh and blood of judicial adjudication and such reasons must be shown in the orders which are liable to be challenged in the superior court....."

6. In that view of the matter, the petition succeeds. The judgment and order passed by the Secretary (Appeals) dated 30th December 2003/17th January 2004 in Revision Application No. 2 of 1996 is hereby quashed and set aside only on the ground that the same is a non-speaking and non-reasoned order. This Court has not expressed any opinion on the merits of the matter. The revisional authority is directed to pass a fresh order in accordance with law and on merits without in any way influenced by the fact that the impugned judgment and order dated 30th December 2003/17th January 2004 of the Secretary (Appeals) is quashed and set aside by this Court. The revisional authority is directed to decide the revision application, on remand, within a period of three months from the date of receipt of this order. Rule is made absolute with no order as to costs.

rmr. [M.R. Shah, J.]